

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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CIVIL MINUTES - GENERAL

Case No.	CV 12-4560 CAS (JCx)	Date	January 2, 2014
Title	REYNALDO HERNANDEZ V. RODOLFO AVILA SANDOVAL, ET AL.		

Present: The Honorable		CHRISTINA A. SNYDER	
Catherine Jeang	Not Present		N/A
Deputy Clerk	Court Reporter / Recorder		Tape No.
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants	
Not Present		Not Present	

Proceedings: (In Chambers:) MOTION TO SUPPRESS DEPOSITION (Dkt. #53, filed Dec. 5, 2013)

The Court finds this motion appropriate for decision without oral argument. Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing date of January 6, 2014, is vacated, and the matter is hereby taken under submission.

On May 24, 2012, plaintiff Reynaldo Hernandez filed this action against defendants Rodolfo Avila Sandoval, Los Altos Boots, Inc., and Does 1 through 10. Dkt. #1. Plaintiff asserts claims for trademark infringement and false designation of origin in violation of 15 U.S.C. § 1125. Id.

On December 5, 2013, plaintiff filed a motion to suppress the deposition of Mario Cervantes Retamoza, a non-party, on the grounds that Retamoza failed to provide sufficient answers to several of plaintiff's questions during the deposition. Dkt. #'s 53-54. Plaintiff filed a joint stipulation in support of this motion, dkt. #54, and a supplemental memorandum of law, dkt. #56. Defendants filed a reply to the supplemental memorandum, dkt. #57, as well as a request to have plaintiff refile his motion due to deficiencies in the joint stipulation, dkt. #55. Defendants also request a continuance of the hearing date so that they may adequately respond to plaintiff's arguments, as well as an award of attorney's fees as a sanction for plaintiff's failure to comply with the requirements of Local Rule 37. Id.

The Court finds that plaintiff has not shown good cause for obtaining an order from this Court excluding deposition testimony because he has not first brought a motion to compel such testimony before the Magistrate Judge. See, e.g., Miller v. Stevens

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Hospital, Inc., 2002 WL 34705834, at *1 (W.D. Wash. Sept. 9, 2002) (noting that “exclusion is a harsh remedy that is generally appropriate only after an order to compel has been granted and the non-moving party has chosen to ignore its requirements”); General Order 05-07 (authorizing Magistrate Judges in this District to handle discovery-related matters upon referral by the District Judge to whom the case is assigned).

Accordingly, plaintiff’s motion is DENIED without prejudice to being renewed if plaintiff obtains an order from the Magistrate Judge compelling Retamoza’s testimony, and such order is not obeyed. The factual discovery cutoff, previously scheduled for September 26, 2013, is hereby extended to **February 18, 2014**, for the limited purpose of permitting plaintiff to bring a motion to compel before the Magistrate Judge.

Defendants’ request for attorney’s fees is DENIED on the grounds that plaintiff is proceeding pro se, and may not be intimately familiar with the Local Rules and General Orders of this Court.

Defendants’ request for a continuance of the hearing on this motion is DENIED as moot.

IT IS SO ORDERED.

Initials of Preparer

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CMJ
